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June 27, 1994

Mr. William Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

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JUN 27 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton:

Transmitted herewith, on behalf of WJG Maritel Corporation, are Comments submitted for consideration with the Notice of Proposed Rulemaking, GN Docket No. 94-33, *In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers*.

If any questions should arise related to this matter, please contact the undersigned counsel at the direct line noted above.

Sincerely,

  
Susan H.R. Jones

Attachment

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of

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Further Forbearance from Title II  
Regulation for Certain Types of  
Commercial Mobile Radio Service Providers

) GN Docket No. 94-33

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

COMMENTS OF

WJG MARITEL CORPORATION

I. INTRODUCTION

WJG Maritel Corporation ("WJG"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted in the above referenced proceeding<sup>1/</sup>. In the NPRM, the Commission seeks to determine what further provisions of Title II of the Communications Act, pursuant to the Omnibus Budget Reconciliation Act of 1993, it should forbear from applying to commercial mobile radio service ("CMRS") providers in order to promote competition and to protect consumers.<sup>2/</sup>

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<sup>1/</sup> Notice of Proposed Rulemaking, GN Docket No. 94-33, FCC 94-101, Released May 4, 1994.

<sup>2/</sup> The above captioned rulemaking follows the *Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order* (hereinafter "Second Report and Order", Gen. Docket No. 93-252, 9 FCC Rcd 1411 (1994), *erratum*, No. 920486, (released March 30, 1994), which implemented forbearance of Sections 203, 204, 205, 211, 212 and 214 of the Communications Act for any CMRS providers.

WJG is the largest provider of public coast station services in the United States. Its stations cover the Gulf of Mexico, the Southern Atlantic Coast, and U.S. inland waterways. WJG's present inland waterway network serves most areas from Baton Rouge, Louisiana to Chicago, Illinois. Its southern Atlantic system serves most major markets from Morehead City, North Carolina to the Florida Keys. The network consists of 67 transmit locations, each interconnected to one of three control switching offices located in Gulfport, Mississippi; Memphis, Tennessee and Hollywood, Florida. Public coast stations, regulated under Part 80 of the Commission's Rules, provide interconnected common carrier public correspondence telecommunications and data services to sea-going vessels, barges and recreational boaters on frequencies designated for VHF maritime radio.

Public coast stations have traditionally been regulated by both the Private Radio Bureau and the Common Carrier Bureau as a hybrid service. Until recently, public coast stations have fallen under the definition of "dominant" common carriers for purposes of the Title II requirements of the Communications Act of 1934, as amended ("the Act," or "Communications Act").<sup>3/</sup> Pursuant to the Commission's Second Report and Order which implemented the basic provisions of Sections 3(n) and 332 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1990,<sup>4/</sup> however, public coast stations have been reclassified as commercial mobile radio service ("CMRS") providers, because they

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<sup>3/</sup> A Notice of Proposed Rulemaking and Notice of Inquiry (hereinafter "NPRM/NOI"), 7 FCC Rcd 7863 (Pri.Rad.Bur. 1993), pending before the Commission since November 30, 1992, proposes to reclassify public coast stations as non-dominant common carriers.

<sup>4/</sup> Second Report and Order, *Ibid.*

provide to the public, for profit, a radio service with interconnection to the public switched telephone network ("PSTN").

In recent years, public coast stations have experienced severe competition from other mobile communications service providers generally, and particularly from cellular radio service licensees. Yet public coast stations have been effectively prevented from competing with the new services by the Commission's Rules which subject public coast station operators to a host of operating and technological restrictions and requirements. WJG therefore fully supports the Commission's efforts in this series of rulemaking proceedings implementing the Omnibus Budget Reconciliation Act of 1993, in its efforts to "level the playing field" by removing unnecessary regulatory restrictions. As a newly reclassified CMRS provider, therefore, WJG is pleased to have this opportunity to respond to the NPRM.

## **II. CERTAIN CMRS PROVIDERS MERIT FURTHER FORBEARANCE.**

Public coast station operators have been, prior to this series of rulemaking proceedings, subject to unnecessarily burdensome regulations, perhaps more than any other CMRS provider. Unlike the other CMRS providers which are virtually "new" services with relatively recently enacted rules, public coast stations are an established radio service with a history reaching back generations.<sup>5/</sup> The Commission's Rules for public coast stations reflect this long history, generally addressing obsolete technology and long-past customer needs. For

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<sup>5/</sup> The first effort to regulate maritime radio use appeared as the *Wireless Ship Act of 1910*, Pub. L. No. 262, 36 Stat. 629 (1910). Although the Commission's regulations clearly do not date back eighty-four (84) years, the Commission has noted in the NPRM/NOI that "the technical requirements and operating practices for . . . coast stations have been essentially unchanged for many years." 7 FCC Rcd at 7864.

instance, public coast stations are still restricted from providing automatic interconnect service, and until the Second Report and Order in this series of rulemakings, public coast stations were still regulated as dominant common carriers for purposes of Title II requirements.

Largely because public coast stations have been so over-regulated during recent years, a large part of the battle to sustain the industry has been lost to cellular providers and other similar mobile service providers who have been able to offer efficient and inexpensive communications service to boaters. In the NPRM/NOI, the Commission noted: "cellular radio offers increasingly competitive service that is supplanting the use of public coast stations."<sup>6/</sup> With the forbearance of the Title II provisions achieved in the earlier rulemaking, and further modification to the Commission's operational and technical rules, public coast stations may re-gain some lost ground and once again, flourish. In its present state, however, the public coast station industry is declining, although it continues to provide a valuable and needed service. There are approximately 635,000 boaters with maritime radio service licenses plus millions of unlicensed VHF marine radio operators who use public coast station services.<sup>7/</sup> A public coast station can reach those boats with a transmitting range of approximately 30 miles over water to provide safety of life communications assistance, or interconnection to a land-line telephone. In view of past restrictive regulation and its damaging effect to the industry, WJG respectfully asserts that further forbearance of Title II provisions for the public coast station industry is warranted and just.

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<sup>6/</sup> NPRM/NOI, 7 FCC Rcd at 7870.

<sup>7/</sup> NPRM/NOI, 7 FCC Rcd at 7863.

### III. CMRS PROVIDERS MERITING FURTHER FORBEARANCE

In the NPRM, the Commission seeks comment on an appropriate or fair methodology for defining CMRS providers who may be eligible for further forbearance of certain Title II provisions. WJG requests that the Commission find that, as a class, public coast stations are "small" CMRS providers and forbear from Title II regulation to the maximum extent possible. As noted above, public coast stations, as a class, exercise no market power in the CMRS market. Accordingly, imposition of Title II regulations is unnecessary to protect consumers.

In the alternative, WJG suggests that the Commission adopt a variation of its proposal to review CMRS providers for eligibility for forbearance by numbers of channels. Generally, the Commission should evaluate a service's channel position in a market vis-a-vis other CMRS services in that category. The number of channels a service controls will directly correspond to its ability to control the market. Rather than an analysis based strictly on the number of channels, therefore, the Commission may wish to grant further forbearance to services based upon the percentage of spectrum the class of *service* has been allotted in the market. Further forbearance should apply when a CMRS provider controls less than 25% of the total spectrum. With public coast stations, for example, the Commission has acknowledged that cellular providers are a CMRS competitor. Although cellular controls over 400 channels of spectrum, public coast stations have a mere 10 channels, far less than 25%.

This proposal is similar to the Commission's policies on dominant and non-dominant common carriers. The Commission forbears or adjusts the application of some Title II provisions to those carriers that "lack the market power necessary to sustain prices either

unreasonably above or below costs."<sup>8/</sup> The theory underlying the Commission's relaxed regulatory application to non-dominant carriers is based upon the assumption that non-dominant carriers will be forced by virtue of their inferior market position to treat service users more fairly and to keep rates lower to attract a larger share of the market.<sup>9/</sup> Like WJG's proposal for the determination of further forbearance, a CMRS provider cannot dominate the market or take advantage of consumers if its distribution of allotted spectrum is significantly imbalanced from its competitors. Thus, WJG's proposal adheres to the Commission's mandate in this proceeding to promote competition yet protect consumers. In addition, like the Commission's proposed plan based upon the number of channels a licensee uses, WJG's proposal would be "straightforward" and easily administered.

#### **IV. TELECOMMUNICATIONS RELAY SERVICES**

The NPRM seeks comments on whether it should forbear from applying the telecommunications relay service (TRS) provisions of Section 225 of the Communications Act for any or all CMRS providers. TRS provisions require all common carriers providing interstate or intrastate telephone voice transmission service to provide telecommunications services that enable persons with hearing or speech disabilities to communicate with hearing individuals. The Commission asks if there are CMRS providers whose market is so specialized, or small, or whose technical operating configuration would prevent compatibility

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<sup>8/</sup> First Report and Order, In the Matter of Competitive Carrier Rulemaking (hereinafter "First Report and Order"), 85 F.C.C. 2d 1, at 6 (Com. Carr. Bur. 1980).

<sup>9/</sup> First Report and Order, 85 F.C.C. 2d 30-33.

with traditional TRS mechanisms. The unique and specialized nature of public coast service warrants further forbearance of the TRS provisions. Public coast stations offer interconnect service to a land-line telephone via VHF marine radios on-board recreational boats, barges and large vessels. Using a VHF marine radio to access public coast station service is secondary to the traditional VHF marine use, which is open air communication with other boats on the water. The use of sound, therefore, is inherent in the operation of the VHF marine radio. Further, because the initiation of public coast station service typically starts at the VHF marine radio, the nature of the service is not widely available to the public from the customer's vantage point. The expectation or needs of a public coast station's specialized boating customer base makes forbearance from TRS provisions reasonable.

WJG's proposal to permit the forbearance of these provisions for public coast stations is also prompted by financial concerns. Contracting TRS services through a state-certified program is cost prohibitive. The other options available to operators to ensure compliance with TRS provisions are generally as costly, if not more so. With new regulatory fees and increased application costs under recent Commission rulings<sup>10/</sup>, public coast stations will endure increased costs of operation while their market decreases in the face of rising competition by cellular. Many public coast station operators are individual operators with one or two stations with severely limited financial resources. In view of these factors, the costs of complying with the TRS Title II provision are economically infeasible.

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<sup>10/</sup> Notice of Proposed Rulemaking In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD 94-19, FCC 94-46, released March 11, 1994 FCC Rcd (1994).



WJG further notes that, unlike other CMRS providers, hearing or speech impaired mariners who may wish to communicate to a party on land, specifically to convey distress or emergency, have other adequate means to communicate. Telegraphy, emergency position indicating radio beacons ("EPIRBs"), flags or flares, have proven to be effective communicating devices.

## **V. OPERATOR SERVICES**

The NPRM seeks comment on the possible forbearance of Section 226 of the Communications Act, the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). TOCSIA was enacted by Congress to "protect consumers who make interstate operator services call from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices."<sup>11/</sup> To that end, the Commission adopted rules addressing both "aggregators," the providers of telephone equipment, and "operator services providers," the providers of telephone service. Section 64.708(b) of the Commission's Rules defines "aggregator" as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."<sup>12/</sup> Section 64.708(g) of the Commission's Rules defines "operator services" as: "any interstate telecommunications service *initiated from an aggregator location* that includes, as a component, any automatic or live

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<sup>11/</sup> S. Rep. No. 439, 101st Cong., 2d Sess. at 1 (1990).

<sup>12/</sup> 47 C.F.R. § 64.708(b).

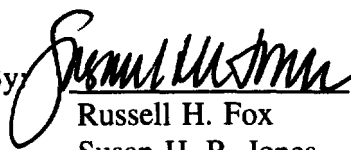
assistance to a consumer to arrange for billing or completion, or both of an interstate telephone call. . ." (emphasis added.)<sup>13/</sup>

WJG asserts that because public coast station service is initiated from a VHF marine radio, not provided by, or owned and controlled by, a public coast station licensee, that public coast stations are not "aggregators" under the meaning of TOCSIA provisions. In fact, there is no "aggregator" component to the public coast station service. Likewise, because "operator services" are defined specifically as any service "initiated from an aggregator location," there is no "operator service" component to public coast station service. Conclusively, under the language of the statute, TOCSIA provisions do not apply to public coast stations.

**WHEREFORE, THE PREMISES CONSIDERED,** WJG Maritel Corporation hereby submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**WJG MARITEL CORPORATION**

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<sup>13/</sup> 47 C.F.R. § 64.708(g).